REMARKS

Claims 42, 43, 45-52 and 54-57 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks.

In the outstanding Office Action, the Examiner rejected claims 42, 43, 45-52 and 54-55 under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent No. 5,517,021 to Kaufman et al. (hereinafter referred to as "the Kaufman et al. '021 patent") in view of U.S. Patent Application Publication No. 2001/0049480 to John et al. (hereinafter referred to as "the John et al. '480 publication"); and rejected claims 56 and 57 under 35 U.S.C. § 103(a), as being unpatentable over the Kaufman et al. '021 patent in view of the John et al. '480 publication and in further view of U.S. Patent No. 6,629,935 to Miller et al. (hereinafter referred to as "the Miller et al. '935 patent").

By this Response and Amendment, claims 19, 42 and 45 have been amended. In this regard, Applicants note that the amended claims merely clarify the subject matter recited in the rejected claims. Claims 19 and 45 have been amended to correct informalities. Claim 42 has been amended to recite "wherein said computer processor is programmed with a predetermined maximum value of a plurality of faults and is further programmed to collect data notwithstanding said fault until after a recording said value of a plurality of faults and is programmed to stop the collection of data after receiving an indication that the data collected is reliable."

Support for the amendments to claim 42 can be found on pages 12 and 13 of the originally filed specification. Therefore, it is respectfully submitted that the above amendments do not introduce any new matter to this application within the meaning of 35 U.S.C. §132.

Claim Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 42, 43, 45 – 52 and 54-55 under 35 U.S.C. § 103(a), as being unpatentable over the Kaufman et al. '021 patent in view of the John et al. '480 publication; and

rejected claims 56 and 57 under 35 U.S.C. § 103(a), as being unpatentable over the Kaufman et al. '021 patent in view of the John et al. '480 publication and in further view of the Miller et al. '935 patent.

Response

Applicants respectfully traverse the rejections since all of the features of the presently claimed subject matter are not disclosed by the cited references. To establish a *prima facie* case of obviousness, the Examiner must show that the prior art references teach or suggest all of the claim features. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine,* 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Primary Rejection

Amended claim 42 recites, *inter alia*: "wherein said computer processor is programmed *with a predetermined maximum value of a plurality of faults and is further programmed to continue to collect data notwithstanding detection of a fault until* after a recording *said value of a plurality* of faults and is programmed to stop the collection of data after receiving an indication that the data collected is reliable."

The Kaufman et al. '021 patent discloses "a system and method enabling humans to communicate or dialogue with each other or with external devices using EOG [electro-oculography] signals generated by eye movement and other eye 'gestures'." The John et al. '480 publication abstract discloses "an apparatus and method for assessing a subject's hearing by recording steady-state auditory evoked response. The apparatus generates a steady-state auditory evoked potential stimulus, presents the stimulus to the subject, senses potentials while simultaneously

presenting the stimulus and determines whether the sensed potentials contain responses to the stimulus."

In contrast to the presently claimed subject matter, the cited prior art references do not disclose, teach or suggest, "wherein said computer processor is programmed with a predetermined maximum value of a plurality of faults and is further programmed to continue to collect data notwithstanding detection of a fault until after a recording said value of a plurality of faults and is programmed to stop the collection of data after receiving an indication that the data collected is reliable" as recited in the present claims. The cited prior art references do not disclose, teach or suggest this feature.

At col. 3, lines 4 – 7, the Kaufman et al. '021 patent discloses that: "The system automatically disengages when it senses non-interaction episodes, e.g., turning to look at someone who enters the room. The system then allows re-engagement when the user generates the appropriate commands." The Kaufman et al. '021 patent is deficient with respect to a "predetermined maximum number of a *plurality* of faults." Contrastingly, the Kaufman et al. '021 patent discloses discontinuing data collection after detection of a *single* fault. The Kaufman et al. '021 patent is also deficient with respect to "continu[ing] to collect data notwithstanding detection of a fault." Contrastingly, the Kaufman et al. '021 patent discloses the requirement that the user generate appropriate commands to restart the system after a fault is detected.

The John et al. '480 publication does not cure the deficiencies of the Kaufman et al. '021 patent. The John et al. '480 publication discloses an apparatus and method for assessing a subject's hearing by recording steady-state auditory evoked responses. The Examiner cited numerous passages of the John et al. '480 publication as disclosing "wherein said computer processor is programmed to stop a collection of data after a recording of a predetermined number of faults... is programmed to stop the collection of data after receiving an indication that the data collected is

reliable." However, these passages do not disclose, teach or suggest, "wherein said computer processor is programmed with a predetermined maximum value of a plurality of faults and is further programmed to continue to collect data notwithstanding detection of a fault until after a recording said value of a plurality of faults and is programmed to stop the collection of data after receiving an indication that the data collected is reliable" as recited in the present claims. Instead, these passages discuss adaptive artifact rejection and probabilistic determinations and the use of further filtering or statistical mechanisms (see paragraph [0158]). Also, paragraph [0170] of the John et al. '480 publication refers to "statistical analysis" as a detection method with respect to the SSAEP response. The cited passages contain numerous references to digital signal processing/functions of audio and audible signals and tests. Paragraphs [0254]-[0271] discuss AM and FM tests and stimuli, modulation, modulation envelope, modulation rate, modulation depth, modulation frequencies, etc.

Since the cited prior art combination does not disclose or suggest all of the features of the presently claimed subject matter, it is respectfully submitted that claim 42, as well as the claims dependent thereon, is novel, unobvious and consequently patentable over the cited prior art of record. No *prima facie* rejection under 35 U.S.C. 103(a) can be made against these claims and Applicants request an indication of such. Accordingly, for at least these reasons, Applicants respectfully request that the Examiner reconsider and withdraw the rejections.

Rejection of claims 56 and 57

Applicants respectfully submit that the teachings of the Miller et al. '935 patent, when considered, do not cure the deficiencies of the Kaufman et al. '021 patent and the John et al. '480 publication in disclosing the features of independent claim 42. Since the cited prior art combination does not disclose or suggest all of the features of the presently claimed subject matter, it is respectfully submitted that claim 42 is novel, unobvious and consequently patentable over the

cited prior art of record. No *prima facie* rejection under 35 U.S.C. 103(a) can be made against these claims and Applicants request an indication of such.

As discussed above, Applicants respectfully submit that independent claim 42 is patentable over the cited prior art, an indication of which is kindly requested. Dependent claims 56 and 57 depend from independent claim 42. Accordingly, Applicants submit that dependent claims 56 and 57 are patentable at least by virtue of their dependency. Accordingly, for at least these reasons, Applicants respectfully request that the Examiner reconsider and withdraw the rejections.

As discussed above, Applicants respectfully submit that independent claim 42 and dependent claims 43, 45-52 and 54-57, dependent therefrom, are patentable over the cited prior art, an indication of which is kindly requested. In view of the foregoing, reconsideration and withdrawal of the above rejections is respectfully requested.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner contact the undersigned.

Respectfully submitted,

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